is a matter on which I express no opinion, though I do not think it would be improper for me to say that as a member of the Court which decided the appeal in this case I am of opinion that such an application would at least have considerable merits. As far as I can see this course still remains open to the 5th defendant.

The course which was adopted by the Court of Appeal in the case of *Whiston v. Woolley*[1] confirms me in my view that the High Court has no power to vary this order. It seems clear that the Court of Appeal thought it necessary in that case for the heir at law to appeal before he could obtain the benefit of their judgment. If leave to appeal were asked for in this case the Court of Appeal might take the view that the 5th defendant ought to have the benefit of their judgment or they might take the view that as he had not chosen to appeal he should not be allowed that benefit. The question therefore appears to me to be eminently one for the full Court of Appeal.

For the reasons I have given I have come to the conclusion that I have no power to make any order in regard to the 5th defendant's costs in the action and that as the matter stands at present the 5th defendant, having elected not to appeal, I must hold him bound by that election.

Mr. Ong Huck Lim on behalf of the 5th defendant requested that in case my decision on this application should be against him he be given leave to appeal and I give leave accordingly; but I think it right that I should intimate that the 5th defendant would in my opinion be well advised to consider whether the better course would not be to apply to the Court of Appeal for leave to appeal against the judgment of Jobling, J., in the manner that was allowed to the heir at law in the case of *Whiston v. Woolley*[1]. He might think it well to pursue both alternatives simultaneously, but I express no opinion as to that.

This application must be dismissed with costs.

Application dismissed.

LIEW CHIN SEONG v. REX.

[App. Crim. Juris. (Sir Charles Murray-Aynsley, C.J.) May 7, 1952]

[Singapore — Magistrate's Appeal No. 208 of 1951]

Criminal trial — Criminal Law and Procedure — Defence of alibi — Duty of Magistrate to consider.

The appellant, a police detective, was charged with extorting $80 from the complainant and was convicted and senteneed to 4 months rigorous imprisonment. The story for the prosecution was that the appellant went to the complainant who kept an ice-water stall at Boat Quay near Whiteaways Laidlaw's shop on July 16, 1951 and extorted $80 from the complainant. The prosecution called 3 alleged eye-witnesses. One of them gave the time for the alleged offence as 10.30 a.m., another as 10.00 a.m., and the 3rd as "past 10.00 a.m." Against that the appellant established that he was in the Central Police Station from 8.25 a.m. until 10.20 a.m. At that time he had to take a supervisee to Beach Road Police Station where he reached at 10.30 a.m. It took him 20 minutes to hand over the supervisee. The learned Magistrate in his grounds of judgment, inter alia, said: "If the accused's alibi accounted for the whole of his time between 10 and 11 on that morning, I should consider that it disproved the prosecution case."

Held: the learned Magistrate should have considered whether the evidence for the defence did not produce a reasonable doubt.

MAGISTRATE'S APPEAL.

K. A. Seth and *D. S. Marshall* for the appellant.

A. V. Winslow (Crown Counsel) for the respondent.

Sir Charles Murray-Aynlsey, C.J. : — In this case the appellant, a detective corporal, had been convicted on a charge under section 384 of the Penal Code. At the trial he had produced an *alibi*. There were three alleged eye-witnesses produced for the prosecution. One of them gave the time for the alleged offence as 10.30 a.m., another as about 10 a.m., the third as "past 10 a.m;" against that the appellant established that he was in the Central Police Station from 8.25 a.m. until 10.20 a.m. At that time he had to take a supervisee to Beach Road Police Station and there hand him over. A Police witness estimated the time required for handing over as 10 to 15 minutes. The alleged offence took place in Battery Road. The defence produced a further *alibi*, which seems to have been accepted by the Magistrate, from 11 a.m. onwards at a coffee shop in Merchant Street. The Magistrate said of this: "If the accused's *alibi* accounted for the whole of his time between 10 and 11 on that morning, I should have considered that it disproved the prosecution case.

In the circumstances I think that the learned Magistrate should have considered whether the evidence for the defence did not produce a reasonable doubt. In the circumstances I allowed the appeal and quashed the conviction.

Appeal allowed.
Conviction quashed.